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LAW AND POLICY REFORMS OF FARMER PRODUCER COMPANIES BUSINESS INDIA

REFORMAS POLÍTICAS E LEGAIS DAS EMPRESAS PRODUTORAS DE AGRICULTORES ÍNDIA*

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Abstract: Even before India achieved its independence, cooperatives quickly emerged as the most popular kind of institutional structure for generating collective action in business and entrepreneurship. After liberalization, it became clear that the agricultural sector required a new institutional system to reawaken the collectivist notion that had been dormant there, mainly to acknowledge the value that small and marginal landholders may generate. The idea of a farmer producer company (FPC), which was added to the Companies Act of 1956 in 2002, came about as a way to help all farmers, especially small and marginal farmers and later was included in the Companies Act of 2013 as it is. The purpose of this research is to investigate the organizational framework of producer firms and make an effort to explore the policy changes that might facilitate the growth of producer companies in India. The researchers in this article have adopted doctrinal research methodology and analytical approach to review the law and policy aspects of producer companies in India. The article has concluded that producer company reforms inserted in the companies act 2013 with policy initiatives of government instrumentalities under the ease of doing business mandate have strengthened the governance of producer companies. Producer organizations now have the choice to strategically change to prepare farmers for the contemporary environment of competitive marketplaces.

Keywords: Farmer producer company. Corporative. Corporate governance.

Resumo: Mesmo antes da Índia alcançar sua independência, as cooperativas rapidamente emergiram como o tipo mais popular de estrutura institucional para gerar ação coletiva nos negócios e empreendimentos. Após a liberalização, tornou-se claro que o setor agrícola exigia um novo sistema institucional para despertar a noção coletivista que ali estava adormecida, principalmente para reconhecer o valor que os pequenos e marginais proprietários de terras podem gerar. A idéia de uma empresa produtora de agricultores (FPC), que foi acrescentada à Lei das Empresas de 1956 em 2002, surgiu como uma forma de ajudar todos os agricultores, especialmente os pequenos e marginais, e mais tarde foi incluída na Lei das Empresas de 2013 como está. O objetivo desta pesquisa é investigar a estrutura organizacional das empresas produtoras e fazer um esforço para explorar as mudanças políticas que poderiam facilitar o crescimento das empresas produtoras na Índia. Os pesquisadores neste artigo adotaram metodologia de pesquisa doutrinária e abordagem analítica para rever os aspectos legais e políticos das empresas produtoras na Índia. O artigo concluiu que as reformas das empresas produtoras inseridas nas empresas agem em 2013 com iniciativas políticas de

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instrumentalidades governamentais sob a facilidade de fazer negócios fortaleceram a governança das empresas produtoras. As organizações de produtores agora têm a opção de mudar estrategicamente para preparar os agricultores para o ambiente contemporâneo de mercados competitivos.

Palavras-chave: Empresa produtora de fazendeiros. Corporativo. Governança corporativa.

1. INTRODUCTION

A producer company is, in simple terms, a group of farmers or other agricultural professionals who have formed a legal entity to improve their quality of life and ensure they have access to resources, make money, and are profitable. The main goal of the producer company is to make it easier for cooperative businesses to become corporations and to make it possible for cooperative companies that already exist to change into corporations. (MCA, 2013). It is suggested that only organizations or collectives of primary producers can safeguard small farmers from the negative consequences of globalization and enable them to engage effectively in contemporary competitive marketplaces (Singh, & Singh, 2013). India's producer enterprises help farmers use economies of scale to get low-cost inputs, apply innovative technologies, access funds and loans, create direct market contacts, and build post-harvest processing facilities. The Producer Company's members earn money for pooled and delivered produce. Members get cash or stock. The Income Tax Law in India does not offer tax incentives for farmer-producer enterprises, although they may benefit from tax exclusions and privileges based on their agricultural operations.

The National Policy on Co-operatives (National Policy on Cooperatives) outlines the formation of cooperatives as institutions. 1904 marked the beginning of the first formal effort to institutionalize cooperatives. The Government of India Act of 1919 delegated the authority to pass cooperative laws to the then-provinces. At this time, the issue of cooperation was handed over to these provinces. Primary producers, like farmers, milk producers, fishers, weavers, rural artisans, and crafters, can form a legal group called a Producer Organization (PO). Any one of the following legal provisions may serve as the

Figure 1. Advantages of Producer Company

Source: Author Created

basis for the registration of a producer organization:

a) The individual state's Cooperative Societies Act and its Autonomous or Mutually Aided Cooperative Societies Act, 1995.

b) The Multi-State Co-operative Society Act was passed in 2002.

c) c) Producer Company, as defined by the new section IXA of the Indian Companies Act, 1956, which the government changed in 2002.

d) d) Producer Company, as defined by Section 581(C) of the Indian Companies Act, 1956, with changes made in 2013.

e) Societies that have been registered following the Society Registration Act of 1860

f) Public Trusts that have been registered under the Indian Trust Act of 1882

The concept of producer firms was pioneered in the 1990s in Sri Lanka, where they were first referred to as farmers' companies. (Rosairo, et. al. 2012). Many cooperative companies are also prominent in Denmark, New Zealand and Australia. Primarily these cooperative companies are involved in the business of dairy production (Le Cren, 2009). This Company was introduced in India as per the newly developed trend in Asia. Looking at the forecast made by western economists that small farms would soon disappear as large farms, this form of Company is significant to revolutionise agriculture in India. Given the past performance of traditional cooperatives in India, more freedom must be granted to these

types of businesses. As a result, a change to the Companies Act of 1956 was enacted in 2003, ultimately resulting in the Producer company's formation under the Companies Act 2013 (Bikkina, et al. 2018).

Although there has been a significant fall in the country's agricultural GDP since 1950, the number of people depending on agriculture has only slightly decreased (Siddiqui, 2015).). At the time of the 2011 Agricultural Census in India, there were around 138 million agricultural holdings. (Darsha, et al. 2017). The vast majority of India's farmers (over 85%) have less than 2 hectares of land holdings. There are around 12.5 crore farmer families in India. Each farm family has 1.33 hectares of land (Kalamkar, 2011). Due to this fragmentation and disorganisation, it is not economically feasible for farmers to use high-yielding inputs, such as seeds and fertilizers.

Additionally, they cannot sell their products separately to get a fair price for their marketable surplus. However, Handloom weavers and artisans can't compete with their effects on the market because they are low-quality and have outdated designs. Due to their position as smallholders, these farmers confront several primary challenges, including a lack of economies of scale, restricted access to information, and an inability to participate in the price discovery process. An ideal aggregation model is significant due to the transformation of Indian agriculture into high-value commodities, which is the result of the agri-food market brought about by liberalization, globalization, increased purchasing power, demand for safe and high-quality food, expansion of niche markets, etc. Given the fragmentation of the land, its significance has increased.

2. LITERATURE REVIEW

Nearly all of the country's major corporations have recently made significant investments in the agribusiness industry, especially in light of new legislation that lets corporations directly enter into contracts with farmers (Ahluwalia, 2002). The current structure of agricultural markets includes some intermediaries; thus, the producers' share of consumer dollars is modest (Barrett, et al., 2019). This pattern holds true for all agricultural goods. One of the reasons for this resurgence of corporate interest in agribusiness is the considerable shift in consumer behaviour from local Kirana stores to supermarkets, shopping centres, and food plazas. This movement has made it possible for food supply chains from fields to consumers (Murray, 2008). The Registrar of Cooperative Societies has

the cooperatives' registration information. In a wide range of business sectors, India has many cooperative institutions. The cooperative experience in India has not been happy because cooperatives have had significant backing from the government and have an agenda centred on welfare rather than economic or commercial purposes (Prabhakar, et al., 2012). The producer organizations are recognized rural groups whose members have joined forces to boost agricultural revenue via improved marketing, production, and local processing. Producer Organizations engage with the enhancement of the agricultural output practises access to inputs and services, including agricultural loans, marketing of agricultural products, local processing of agricultural production, and its marketing (Rondot & Collion 2000). Farmers' Producer Organizations and Producer Companies are precious for enhancing the value chain of agricultural products and, as a result, have assisted farmers in obtaining favourable pricing for their output (Trebbin & Hassler, 2012). In India, agricultural production risks have disproportionately affected small and marginal farmers. Multiple organizational prototypes are emerging to include them in the value chain to increase incomes and decrease transaction costs. The Farmers' producer companies (FPOs) are one example (Mourya & Mehta, 2021).

3. METHODOLOGY

Methods

The methodology for research in this paper is doctrinal and exploratory. The approach of this paper is analytical in an entrepreneurial context. The dispute over market forces against government regulation and the concept of corporate governance is economic. In this way, a significant portion of this research borrows concepts and lines of reasoning from law, policy and economics to interpret issues and concerns better.

Legal Materials

Primary Legal Materials

The primary legal materials are legislations, Government Ministry Rules, High Committee Reports of Government Departments and Government Notifications or Circulars, which include:

- Companies Act 2013
- Companies Act 1956
- Income Tax Act 1961
- The Cooperative Societies Act of 1912

- High Powered Committee for Formation and Conversion of Cooperative Business into Companies,2000 (Alagh Committee)
- The report of the Company Law Committee 2019
- The report of the Company Law Committee 2022

Secondary Legal Materials

Secondary legal materials for this research include publications on the law that are not official documents but come from legal publications such as law books, newspaper articles, legal journals or court decisions, research reports, and blogs. These are some examples of the types of legal publications that are considered secondary legal materials. However, theses, theses, and dissertations are also secondary laws. These secondary laws guide and inspire the author in assembling research, including theses and dissertations.

Non-Legal Materials

When correctly recognising and interpreting facts and knowing the legal problems, non-legal resources are an extension of writing. This comprises works such as books on economics, studies on public policy, research papers, and reports on multidisciplinary elements of producer firms that think tanks or civil society organizations have produced.

4. RESULT AND DISCUSSION

Governance of Producer Company

The Indian Ministry of Company Affairs has filed a bill to modify the Companies Act, 1956 (based on the report provided by the High-Powered Committee chaired by Dr YK Alagh) by introducing Part IX A, clearing the way for the creation of Producer Companies. The Act has allowed primary producers to organize themselves for optimum profit in a market-based economy. The companies Act 2013 has not incorporated the provisions for the regulation of producer companies. Instead, it directed the application of the Companies Act 1956 provisions. In 2019, the Ministry of Corporate Affairs set up the Company Law Committee, which made the following recommendations:

- Incorporating the provisions of Part IXA (Producer Firms) of the Enterprises Act, 1956 into the Companies Act, 2013, as well as;
- extending the advantages of Section 446B (reduced fines for small companies and one-person companies) to producer companies and start-ups will accomplish these goals (Tiwari, (2021).

The Companies Act of 2013 (Chapter XXIA), namely sections 378A to 378ZU, governs Producer Companies. The Companies (Amendment) Act 2020, which was updated on September 29, 2020, and went into force on February 11, 2021, included the whole of chapter XXIA.

Legal Provisions as Per Companies Act 1956

Section 378A to 378ZU of the Companies Act 2013, written in Chapter XXIA, governs the laws relating to producer companies in India.

- As per the Companies Act of 1956, a **Producer Company** is a body corporate with the purposes or pursuits listed in section 378B that has been registered as a producer company under the Act or the Companies Act of 1956.
- **Member** in a Producer Company means that a person or Producer Institution has been admitted as a Member of a Producer Company and continues to meet the criteria for doing so, whether or not it is incorporated.
- **Producer** in a Produce Company refers to anyone involved in any activity related to or associated with any primary produce.
- **Producer Institution** means a Producer Company or any other institution that accepts the services of the Producer Company or Producer Companies according to its bylaws and has the Producer Company or Producer Companies as one of its members, whether the institution is incorporated or not.

In India, the Producer Companies are not so widely used in all the states, but this form of Company has a good grip in the southern portion of India. There are five times of Producer Companies which can be formed in India. They are as follows:

- **Business of Production**: In general, "production" refers to the combination of raw materials and a plan to create something for consumption. The production industry deals with the creation and acquisition of goods.
- **Business of Marketing**: This refers to attracting potential customers to your items and selling agricultural products to other firms and consumers through marketing.
- **Business of Technical Services**: The business providing technical services includes technical product analysis, research and development, and training for operating machines.

– **Business of Finance**: This Company is to assist the Producer Company in reaching its financial objectives. Financial businesses effortlessly handle everything, from managing cash flow to taking out a loan.

– **Business of Infrastructure**: This Company deals with issues such as water resources, land, electricity, techniques, and land utilization, so the producer firm is eligible to participate as a producer company.

Difference Between Producer Private & Cooperative Societies

In India, most of the population is unaware of the distinctions between Producer Companies and Private Companies, as well as between Producer Companies and Cooperative Societies. A thorough difference has not been mentioned anywhere in the company legislation, either. Neither of these things has happened. Neither of these things has happened. To understand what are the fundamental differences between them, let us look at the following table:

Table 1. Comparison of Producer company with Private Limited Company

Particulars	Producer Company	Private Company
Minimum No. of Members	Combination of 10 or more people, two or more businesses, or producer institutions	Any two or more individuals or Two or more companies Or a combination of individuals or Companies more than 2 in number
Maximum number of member	There is no maximum limit	The maximum limit is 200 members
Cessation of membership	A person ceases to be a member (a) he ceases to be a Primary Producer (b) he has any business interest which conflicts with the business	1. Buyback of shares, or 2. transfer of shares, or 3. Non-payment of either the allotment or the call money, or

		4. on the death of a member, or 5. if a member becomes insolvent, or 6. by an order passed by the court etc.
No. of directors	At least five and not more than fifteen Directors	At least two and not more than fifteen Directors
Number of additional or expert directors	One-fifth of the total strength of the number of directors on the Board should not be made up of any additional or expert directors.	No such limit,

Table 2. Comparison of Cooprative Society and Producer Company

Particulars	**Co-operative Society**	**Producer Company**
Registration	Co-op Societies Act. 1912	Companies Act 2013
Membership	Open to any individual or cooperative.	Only to producer members and their agencies.
Area of Operation	Restricted.	No restriction as such.
Voting Rights	One person has only one vote, but the RoC and the government have veto power.	One member has only a vote.
Dispute Settlement	Through the Co-op system.	Through Arbitration.

Incorporation of Producer Companies In India

For the incorporation of a Producer company, the following steps must be followed per the Companies Act 2013. These steps are as follows:

Table 3. Steps for Incorporation of Producer Company

Step No	Name of the Step	Details of the Step
Step 1	Name Reservation	The Company's name must be submitted via SPICE Part A with the Rs. 1,000 application fee or directly with the Company. The words PRODUCER COMPANY LIMITED should be at the end of the company name.
Step 2	Preparation of MOA and AOA	As long as there are at least ten subscribers, the Producer Company's MOA and AOA must always be physical documents. As a result, the Producer Company's formation does not require submitting SPICE MOA and AOA documents.
Step 3	Preparation of E-form SPICE	The applicant must complete the information on the electronic form "Spice+" and attach the following documents: - A copy of the applicant's authorization to serve as a director, as well as evidence of identification and home address. NOC from the property's owner is required, as well as documentation of the office address (such as a lease agreement or conveyance deed) (not older than two months).
Step 4	Filing of forms with the Ministry of Corporate Affairs	When all the documents are completed, upload Spice+, Agile Pro, and INC-9 as linked forms on the MCA website and pay the associated fees. If there is a mistake or error in the SPICE Forms, MCA allows up to two attempts to amend it.
Step 5	Certificate of Incorporation	CIN, PAN, and TAN information must be printed on the incorporation certificate.

Corporate Governance Compliances

- There must be a minimum of 5 directors and a maximum of 15 directors for each Producer Company.
- The election process for selecting directors must be completed within a 90-day window beginning when the Company was registered.
- The Members shall elect or appoint the Directors at the AGM (Annual General Meeting) (Kumar, 2018).

- Each nominated Director must serve for a minimum of one year and five years, according to the relevant requirements.
- AGMs (Annual General Meetings) must be conducted annually and published through a notice that includes the schedule, meeting minutes, audited balance statement, etc. The notification must be sent within fifteen months of the date of the most recent annual general meeting (Annual General Meeting).
- Within 90 days of the Company's establishment date, the first AGM (Annual General Meeting) must be convened.
- The Registrar must receive the minutes of each AGM, the Director's Report, the audited balance sheet, the Profit and Loss account, and the annual returns within 60 days of the completion of the AGM (Kumar, 2018).
- If the Producer Company is formed by producer institutions, the Chairman of the Chief Executive Officer will represent those institutions in the general body. • Appropriate accounting records must be kept for the Company's cash flow, expenses, sales and purchases of items, assets and liabilities, cost of labour, profit and loss statements, etc.
- Both the Institute of Chartered Accountants Act of 1949 and the Company's bylaws require the Chartered Accountant (CA) to conduct an internal audit at regular intervals and in a particular manner.

Issues & Challenges For Farmer Producers' Companies

There is a lack of awareness among government agencies, non-governmental organizations (NGOs), manufacturers, and other stakeholders (such as creditors). For instance, since cooperatives have existed in Gujarat for such an extended period, the bureaucracy there views the Producer Company as a rival rather than a tool to assist the cooperatives' members. Other stakeholders are also ignorant about what Producer Companies really do.

Aggregating small and marginal farmers in India to enable their integration into agricultural markets is one of the primary issues faced by the farmers running the producer companies (Gummagolmath & Lakshmi, 2022). Lack of economies of scale, information availability, and the incapacity of such farmers to take part in the price discovery mechanism are some of the issues that have been present in this business model. Other than this, there

is a growing need for wholesome food and agricultural products. Also, there is an increasing emphasis on the effectiveness of the entire agricultural value chain to guarantee that farmers are paid fairly and that consumers can buy food. These are some of the significant challenges faced by the producer companies in India (Naik & Suresh, 2018).

In addition to being able to buy and sell at a better price, collective action through cooperatives or other groups is crucial to assisting small farmers in adjusting to new patterns and considerably higher levels of competition (Das, 2019). The success elements for any FPO are unique because there isn't one model or list of essential success characteristics; instead, success depends on "organizational fit" (Khandelwal, et al., 2022). Farmers must "upgrade" their abilities, develop new products and business procedures, and invest in the creation of physical capital to add value to their output.

The Producer Companies are treated equally with corporate sector businesses in terms of taxation. Still, they must be treated like any cooperative to grant them benefits like rebates when filing income tax returns (Mukherjee, et al. 2019). Additionally, the Companies and FPOs should be treated independently by The Registrar of Companies, at least in procedural matters (Prasad, et al., 2020).

FPOs may need handholding help for the first four to five years in the past two years before they can stand on their own two feet. This element should be considered, and the government and its relevant agencies should provide support to ensure their viability. The marginal farmers are unable to manage a legally recognized corporation. The government should organize stakeholder capacity-building workshops to address governance-related concerns and offer long-term management and financial support (Ramappa & Yashashwini 2018).

Contemporary Policy & Regulatory Reforms

Given that the primary organizational goal is to raise farmer income rather than to achieve any particular corporate form, the Producer Organizations should be viewed as the foundational organization to assist the agricultural community. Whether an organization is official or informal, there should be a financial case for aggregation, and sustainability and profitability must be built. There are many policy reforms undertaken by the government of India and its instrumentalities for developing and promoting farmer producers' companies in India. These can be summed up as follows;

Credit Guarantee Fund scheme: This scheme's primary objective is to provide "Eligible Lending Institutions" with Credit Guarantee Cover to lower their lending risks for

loans up to Rs. 100 lakhs, hence enabling them to provide collateral-free credit to FPCs (Bhatt, A. S. 2021). Under the Schemes, only Farmer Producer Companies with at least 500 individual shareholders are eligible for Credit Guarantee Coverage. In addition, the Bank must have extended or approved the term loan, working capital, or composite credit facility within six months of the date the Guarantee application was received; otherwise, it would not have been feasible. Personal assurances from board members are included. The maximum guarantee protection is capped at 85% of the contract price.

Initiatives by NABARD: NABARD has established a National Advisory Committee with members from relevant Ministries of the Government of India, SFAC, Academic Institutions, Professional Agencies, Agri Corporates, leading FPOs, etc., to oversee promotion efforts and provide policy inputs for creating an appropriate ecosystem for FPOs to sustain their business operations. To create a sustainable FPO, State level Consultative Committees have been formed under its Regional Offices. These committees will guide the plan implementation. NABARD created a specialized internet portal and digitized all of its FPOs' data, including shareholder member profiles, to meet the need for a consolidated FPO database (Jaya, et al. 2020).

Union Budget 2018–19: In the Union Budget 2018–19, the Indian government announced the following steps to support FPOs for a thriving and sustainable agriculture sector. These steps will help farmers increase productivity by using resources in a way that is effective, affordable, and sustainable (Saini & Gulati, 2021). This will allow farmers to earn more money from their goods:

(i) The programme intends to solve the fluctuation in vegetable prices by launching Operation Greens with a budget of Rs. 500 crores to protect tomato, onion, and potato crops like Operation Flood For the benefit of farmers and customers. FPOs, processing facilities, and expert management will all be promoted.

(ii) The government announced a 100% tax deduction for FPOs with an annual turnover of $1 million to promote an environment allowing farmers to group into FPOs and benefit from economies of scale.

Policy Reforms & Governance Initiatives For Producer Companies

Over the years, the government has started providing the following incentives:

- The Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India gave the Small Farmers Agri-business Consortium (SFAC) (sfac.india.com) the power to help State Governments set up Farmer Producer Organizations (FPOs) (Darshan, et al. 2017). The project, which was first started in 2011–12 as part of the National Food Security Mission (NFSM) and the Mission for Integrated Development of 60,000 Pulse Villages in Rainfed Areas, aims to improve food security in the country (Rajender, et al. 2021).
- The Indian Income Tax Act 1961 exempts tax on agricultural income under section 10(1) (Gandhi, V. P. 1969). To provide a 100% tax deduction, these producer businesses are registered as legal organizations. In actuality, producer companies with 100 crores in annual Indian market revenue are eligible for a 100% tax exemption. Producer companies lawfully registered have received tax breaks since they help increase agricultural productivity across the country. A 100% tax deduction can significantly assist underprivileged farmers (Trivedi, et al., 2022).
- Since the Producer Company's members are primary producers, they occasionally require financial support. As a result, the government allows Producer Companies to grant loans to its members. NABARD has taken up the cause of assisting and meeting the requirements of Producer Companies. In 2011, it created a Producer Organization Development Fund (PODF) for Rs. 50 crores (Tagat & Tagat 2016).
- The most current report from the Company Law Committee, 2021, has proposals that would make it possible for producer organizations to organize under the Limited Liability Partnership Act of 2008. It will give the comparative advantage of LLP to Producer organizations; an LLP is not needed to have its accounts audited until its revenue or capital contribution exceeds Rs. 40 lakhs. (MCA, 2021)
- It is further amended in the Companies Act 2013 that under Sections 378Y and 378ZA, at the general meeting of a producer company, there must be at least 1/4 of the total number of members present (Goyal, 2022).
- During the Covid, different parties asked MCA to make it easier for producer companies to meet the quorum requirement. So, the Committee suggested

that this rule be changed so that a Producer Company could have a quorum of the smallest number of 100 people, or a quarter of all the members (Reddy, 2021).

5. CONCLUSION

Farmer Producer Companies may be able to help people make more money through new ways of doing things, such as FPO-led food processing businesses and local seed and sapling production to help support sustainable agriculture. It will ensure that the FPO has a good mix of local and international markets. It can be concluded that, Because FPOs are more open and easier to track, they can get government aid or in-kind grants to their member farms more quickly and efficiently. By setting up a producer company in India, the Producer Company concept will ensure that the rules are followed and help farmers and other businesses make the most money possible. So, it is also a step forward for the agriculture industry in India. The recent amendment of the Companies Act in 2019 and 2021 has been much-needed reform to reorganise producer companies' governance in India.

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